

JURY TRIAL, REQUIREMENTS FOR — Constitutional and statutory provisions..... Revised 3/2010

Article 2, § 23 of the Arizona Constitution provides a right to a twelve-person jury for crimes carrying the death penalty or thirty years or more of imprisonment, and requires that all criminal verdicts be unanimous. A.R.S. § 21-102 reiterates the requirement for unanimity of jurors in criminal cases and the right to a trial by jury for offenses bearing a potential penalty of thirty years or more in prison. That statute also provides that in other cases in criminal courts of record, juries shall consist of eight persons (six persons in courts not of record).

Article 6, § 17 of the Arizona Constitution provides in part that "[t]he right of jury trial as provided by this Constitution shall remain inviolate, but trial by jury may be waived by the parties in any civil cause or by the parties with the consent of the court in any criminal cause." A.R.S. § 21-102(E) reiterates that constitutional requirement and states that, if the trial court consents, both of the parties in a criminal case may waive the right to a jury trial and/or the required numbers of jurors. The defendant may waive the requirement of twelve jurors, but "[b]efore any waiver of a jury trial by less than 12 jurors can be had, the court must secure the express and intelligent consent of the defendant." *State v. Bushnell*, 121 Ariz. 350, 352, 590 P.2d 466, 468 (App. 1978). A.R.S. § 21-102(E) does not give the defendant any absolute "right " to a verdict from fewer than twelve jurors. While that statute "provides for such a verdict [from fewer than twelve jurors], the statute requires the consent of both parties, as well as approval by the court." *State v. Guytan*, 192 Ariz. 514, 520, 968 P.2d 587, 593 (App. 1998).

A.R.S. § 22-320(A) provides that "A trial by jury shall be had if demanded by either the state or defendant." Thus, the State may demand a jury trial even if the defendant wants to waive his right to a jury trial. This section does not create any substantive right to a jury trial, however, but rather provides the procedure by which a trial by jury may be demanded in cases in which a jury trial is appropriate. *Goldman v. Kautz*, 111 Ariz. 431, 432, 531 P.2d 1138, 1139 (1975).